

REMARKS

Claim Status

Claims 1 – 13 and 16 - 25 are pending in the application. With this Response to Office Action, these claims are presented:

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|------------|----------------------|
| 1-2, 16-17 | Currently Amended |
| 3 – 13 | Original |
| 14 -15 | Canceled |
| 18 - 20 | Previously Presented |
| 21 – 25 | New |

Reconsideration and allowance are respectfully requested.

The Office Action

35 U.S.C. §101 Rejections

The Office Action rejected independent claims 1 and 2 for being allegedly non-statutory subject matter. Applicants respectfully traverse.

The claims as amended obviate the 35 U.S.C. §101 rejection and are allowable. Applicant's request removal of the 35 U.S.C. §101 rejection of claim 1 and 2.

35 U.S.C. 103 Rejections

Claims 1-2, 4-9, 11 and 13-20 are rejected under 35 U.S.C. 103(a) as being allegedly anticipated by Kraft (20040098377) in view of Catan (6491217). Applicants respectfully traverse and request allowance of these claims.

Claim 1

Claims 1 recites “populating a database with that multi-variable information in response to said searching; computing at a web server an effective price in response to that multi-variable information” Neither Kraft, nor Catan disclose or suggest searching for such information responsive to such connection parameters so as to reduce search time and populating a database in response to the searching.

Applicant’s note that the Examiner interview, as described above, explained that the official notice of performance monitoring stated in the Office Action is general one and that novel, non-obvious performance monitoring techniques would likely be allowed. Here, the method of claim 1 is not disclosed in any of the cited art, is novel and cannot be characterized as obvious absent a teaching suggestion or motivation to combine disclosure of Kraft and Catan to effectuate the text of claim 1.

The cited references do not teach, suggest, motivate or disclose the text of claim 1 therefore claim 1 is allowable. Applicants request removal of the 35 U.S.C. § 103 rejection of claim 1 and allowance of claim 1.

Claim 2

Claims 2 recites “determining at least one connection parameter related to or affecting time involved in searching information relating to prices by sellers, said parameter including pre-fetched information.” Neither Kraft, nor Catan disclose or suggest searching for such information responsive to such connection parameters so as to reduce search time.

As noted above, while performance monitoring may be well established in the art, simply being a technique for performance monitoring is insufficient as grounds for obviousness. Novel, non-obvious performance monitoring techniques are allowable subject matter. Here, the performance monitoring has not been shown in any cited art, and there is no teaching, suggestions or motivation to combine the cited art to effectuate the text of claim 2.

The cited references do not teach, suggest, motivate or disclose the text of claim 2 therefore claim 2 is in condition for allowance. Applicants request removal of the 35 U.S.C. § 103 rejection of claim 2 and allowance of claim 2.

Claims 3-13 and 16-20

Claims 3 to 13 and 16 to 20 are all ultimately dependent on claims 1 or 2. Therefore they include all the limitations of claims 1 and 2 and since claims 1 and 2 are allowable, all the claims that depend from them are allowable. Applicants request allowance of claims 3-13 and 16-20.

Claims 15-19

The Office Action rejected claims 15-19 as being allegedly obvious in view of Kraft because they are “designer preferences” and not given patentable weight. Applicants respectfully traverse and request allowance of claims 16-19 (claim 15 is canceled).

Connection reliability, number of transactions, frequency of transactions and multi-variable information are unique parameters that are “related to or affecting time involved in searching information relating to prices by sellers” (see claims 1 and 2). As such they return different results when employed as claimed in the text of claims 16-19.

“Designer preferences” presumably are different means to accomplish the same result. Here, the text of claims 16-19 accomplish different results because they each uniquely limit the connection parameter and affect the operation of claims 1 and 2. Since they limit claims 1 or 2 in different ways and achieve different results, they are not “designer preferences”, but instead are limitations that should be given patentable weight.

Accordingly applicants believe claims 16-19 are allowable and request allowance of claims 16-19.

Claim 20

The text of Claim 20 states “the selected product is responsive to a degree-of-match parameter”. The Office Action rejects claims 20 with the conclusory statement that claim 20 is obvious. The Office Action further states that the motivation to modify is “to encourage customers/users to use the system more often via the increase number of selections available to satisfy their search criteria.” Here, the Office Action points out the benefit of the text of claim 20, but as noted above, rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness” (MPEP 2143.01 § IV). Further, a motivation to combine or modify cannot be a mere desire to make a better product or a vast majority of inventions would fall into this category and be rejected as obvious.

Applicants request allowance of claim 20 for the foregoing reasons.

Claims 21-25

Claims 21-25 are new claims. They are dependent either on claim 1 or claim 2 and therefore include all the limitations of claim 1 or claim 2. Since claims 1 and 2 are allowable, claims 21-25 are also allowable. Applicants request allowance of claims 21-25.

Applicants’ decision not to argue all of the features of the dependent claims is not an admission that those features are disclosed or suggested by the applied art.

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CONCLUSION

Because claims 16-20 were rejected without providing articulated reasoning with some rational underpinning to support the legal conclusion of obviousness, applicants request that if a new Office Action is forthcoming, that Office Action not be made final.

This Application is in condition for allowance. Reconsideration and allowance are respectfully requested.

The Examiner is invited and encouraged to telephone Applicant's attorney at (650) 947-0700, with any questions, or with any matter that might assist in bringing this Application to allowance.

Respectfully submitted,

/Peter Tormey/

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